

Remarks

Claims 43, 47-66, 98-101 and 103 are pending in the application.

Claims 98-101 and 103 stand withdrawn from consideration.

The specification is objected to.

Claims 43 and 47-66 stand objected to because of informalities.

Claims 43 and 47-66 stand rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

Claims 43 and 47-66, insofar as being in compliance with 35 USC 112, stand rejected under 35 USC 103(a) as being unpatentable over Sakamoto (JP 3-109775) in view of Cogan (US 5,164,325), which is newly cited.

Request for Removal of Finality of Final Office Action

In the office action mailed on August 8, 2007, the Examiner states that the Applicant's amendment (filed on November 11, 2006) necessitated the new ground(s) of rejection. Based on that premise, the office action of August 8, 2007 was made final. However, the Applicant did not amend the claims in the response filed on November 11, 2006, nor in the response filed on May 22, 2007. The Applicant has not amended the claims in any response filed after the response of June 26, 2006, which was filed in conjunction with an RCE. And the Examiner has not made any rejections based on prior art in any Action since June 26, 2006, until the August 8, 2007 Action.

Under MPEP 2671.01, “[t]he examiner will not close prosecution where a new ground of rejection not necessitated by an amendment is made, because the patent owner's right to amend the claims becomes limited after prosecution is closed.” Here, the Examiner raises a new ground of rejection under 35 U.S.C. 103(a). This is the first time since filing of the Applicant's RCE that the Examiner has cited prior art on any grounds, including 35 U.S.C. 102 and 35 U.S.C. 103.

Furthermore, Cogan has never been cited in a previous rejection; combined with Sakamoto, the Examiner sets forth new grounds for rejection under 35 U.S.C. 103(a). The Applicant has not had an opportunity to amend the claims to overcome the rejection. Therefore, the finality of the office action is premature and should be withdrawn.

In view of the foregoing remarks, the final office action should be withdrawn. If there are any questions, the Examiner is requested to call the undersigned.

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Respectfully submitted,

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